

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: David Quigley, AICP, Planning and Zoning Manager/(954) 797-1103

PREPARED BY: David Abramson, Deputy Planning and Zoning Manager

SUBJECT: Ordinance

AFFECTED DISTRICT: Townwide

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: TEXT AMENDMENT -AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 12, LAND DEVELOPMENT CODE, BY AMENDING SECTION 12-313, PROCEDURE FOR VESTED RIGHTS DETERMINATION AND SECTION 12-515, SUPPLEMENTAL REVIEW; BY AMENDING CHAPTER 18, COST RECOVERY PROGRAM, BY AMENDING SECTION 18-1, TITLE, AND SECTION 18-6, PROCESSING AND REVIEW; BY AMENDING CHAPTER 26, VEGETATION, BY AMENDING SECTION 26-31, PAYMENT IN LIEU OF REPLACEMENT OR RELOCATION, SECTION 26-43, REMEDIAL ACTIONS REQUIRED FOR VIOLATIONS, AND SECTION 26-44, FEES AND VALUES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

EXECUTIVE SUMMARY: This ordinance is necessary to update and consolidate the development application/review fee schedule for the Planning and Zoning Division. Various sections of the Town code provide for Town Council to adopt application fees by resolution. However, in several instances, fees were erroneously adopted by ordinance and codified in the code. Local Planning Agency recommended approval.

In order to comprehensively update the Town's development application/review fee schedule and correct other inconsistencies, certain fees must be repealed from the code. In a separate Town Council agenda item, staff will provide an updated fee schedule for adoption by resolution. The recommendations will not affect building, engineering or other Town application fee schedules.

KEY POINTS:

- **Application fees should be adopted by resolution, not by ordinance**
- **The proposed ordinance will allow for the adoption of a unified Planning and Zoning fee schedule resolution**
- **An updated fee schedule will be brought to Town Council at a future meeting**
- **The Planning and Zoning Board recommended that tree replacement values also be adopted by resolution (staff agrees and has included this in the proposal)**

CONCURRENCES: At the May 12, 2010 Local Planning Agency Board meeting, Vice-Chair Busey made a motion, seconded by Mr. Farkas, to accept the staff's recommendation with the additional change that we strike the 'Replacement Values' as part of ordinance so it could later be handled by resolution. In a roll call vote, the vote was as follows: Chair Turin – yes; Vice-Chair Busey – yes; Mr. DeArmas – yes; Mr. Farkas – yes; Mr. Jacob – absent. **(Motion carried 4-0)**

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Other - Staff finds the application complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Ordinance; proposed development application/review fee schedule

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 12, LAND DEVELOPMENT CODE, BY AMENDING SECTION 12-313, PROCEDURE FOR VESTED RIGHTS DETERMINATION AND SECTION 12-515, SUPPLEMENTAL REVIEW; BY AMENDING CHAPTER 18, COST RECOVERY PROGRAM, BY AMENDING SECTION 18-1, TITLE, AND SECTION 18-6, PROCESSING AND REVIEW; BY AMENDING CHAPTER 26, VEGETATION, BY AMENDING SECTION 26-31, PAYMENT IN LIEU OF REPLACEMENT OR RELOCATION, SECTION 26-43, REMEDIAL ACTIONS REQUIRED FOR VIOLATIONS, AND SECTION 26-44, FEES AND VALUES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town has over the years adopted various provisions by Ordinance concerning application and development fees; and,

WHEREAS, the Town Council desires to modify provisions in the Code of Ordinances concerning applications and development fees; and,

WHEREAS, the Local Planning Agency of the Town of Davie held a public hearing on May 12, 2010; and,

WHEREAS, the Town Council of the Town of Davie held a public hearing duly advertised as required by State Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the above foregoing whereas clauses are hereby incorporated.

SECTION 2. That the Town Council repeals Ordinance 2003-42 that relates to Planning and Zoning Development Review Fees; and,

SECTION 3. That the Land Development Code of the Town of Davie, Florida, is hereby amended to read as follows (new language is underlined, deleted language is struck through):

[From Chapter 12, Article X, Planning and Development:]

Sec. 12-313. Procedure for vested rights determination.

(A) A request for a vested rights determination shall be made by the applicant in a letter to the town attorney, with a copy of the letter simultaneously sent to the town administrator, the development services director, the mayor and each councilmember.

(B) Accompanying the copy of the letter to the town administrator shall be a fee as set by resolution to cover the cost to the town for making the vested rights determination.

[subsequent paragraphs unchanged except for renumbering]

[From Chapter 12, Article XV, Wireless Communication Facilities:]

Sec. 12-515. Supplemental review.

(A) Where due to the complexity of the methodology or analysis required to review an application for a wireless communication facility requiring a special permit, the town council may require a supplemental review by a third party expert, the costs of which shall be borne by the applicant, which sum shall be in addition to ~~site plan and special permit~~ to application fees. ~~Applicant shall submit a deposit of two thousand dollars (\$2,000.00) towards the cost of such supplemental review upon written notification from the town council that a supplemental review is required, and shall remit any outstanding balance to the town for such review (not to exceed the total costs set forth in the Town of Davie's current fee schedule for supplemental review) prior to issuance of a building permit. New antenna supporting structures shall require a supplemental review. The town council reserves the right to require a supplemental review for any other type of structure.~~

Planner's Note: The above requirement for a \$2,000.00 deposit is unnecessary because the cost recovery provision of Chapter 18 that already provides mechanism for collection of this type of supplemental review fee.

[subsequent paragraphs unchanged except for renumbering]

[From Chapter 18, Cost Recovery Program]

Sec. 18-1. Title.

These regulations shall be known and referred to as the Town of Davie Cost Recovery Program.

Sec. 18-6. Processing and review.

The following shall apply to the processing for development applications:

- (1) Fees. Applicants shall be required to pay initial filing fees as adopted by resolution. If additional fees are necessary, the applicant will be asked to pay such fees on or prior to each major review phase of the town's processing procedures.

[subsequent paragraphs unchanged except for renumbering]

[From Chapter 26, Vegetation.]

Sec. 26-31. Payment in lieu of replacement or relocation.

When allowed by a tree removal permit, any trees which are removed and not relocated shall be replaced in accordance with the requirements of this article. As a condition of being granted permission to remove any trees, the developer, property owner or other applicant shall be required to replace such trees, unless it is demonstrated that replacement is not a viable alternative due to a lack of available space. Where replacement cannot be accomplished, the applicant shall pay a replacement fee in lieu of actual tree replacement costs into the tree preservation trust fund. Except for specimen

trees, which are governed by Section 26-32, tree replacement costs shall be determined by the schedule of tree mitigation values pursuant to Section 26-44.

[subsequent paragraphs unchanged except for renumbering]

Sec. 26-43. Remedial actions required for violations.

- (a) In the event a person abuses a tree in violation of this article, the violator shall be responsible to undertake corrective pruning and/or other remedial actions that the enforcement agency determines are reasonably necessary to protect public safety and property, and to help the tree survive the tree abuse damage if the tree can be remediated and if the tree is not a nuisance species.
- (b) If the natural habit of growth and/or structural integrity of the tree is severely damaged or destroyed, as determined by the enforcement agency, the violator shall obtain a tree removal permit, remove the abused tree(s) and install replacement tree(s), based upon the mitigation as specified in the permit authorization issued by the enforcement agency.
- (c) In the event that a person removes a tree(s) from a site without first obtaining a tree removal permit, the violator shall be responsible for obtaining the tree removal permit after the fact and installing replacement tree(s), based upon the mitigation as specified in the permit authorization.
- (d) Each replacement tree shall be of a non-invasive, non-nuisance species agreed to by the enforcement agency during the tree removal permit authorization process. Replacement trees shall be Florida No. 1 quality or better, as described in the Florida Department of Agriculture and Consumer Services Division of Plant Industry publication "Florida Grades and Standards for Nursery Plants". The diameter of the replacement [tree(s)] shall be equal to or greater than the diameter of the abused tree. More than one (1) tree may be utilized for replacement if the aggregate sum of the diameters of the replacement trees is equal to or greater than the abused tree. Overall height and caliper of replacement tree(s) must adhere to mitigation specifications described in the tree removal permit authorization.
- (e) Replacement trees shall be installed on-site. In the event the site cannot accommodate all required replacement trees, the remaining replacement trees shall be installed on public lands if approved by the town and the applicable jurisdiction that owns the lands. If no suitable public land is located, the violator shall pay tree replacement costs into the tree preservation fund. Except for specimen trees, which are governed by Section 26-32, tree replacement costs shall be determined by the schedule of tree mitigation values pursuant to Section 26-44.
- (f) Remedial actions and replacement required under this section shall be completed within sixty (60) days of the notice from the town that such action is required. The town may require the violator to take immediate remedial actions in the event the abused tree is an immediate threat to the public or property.
- (g) Reserved.

Sec. 26-44. Tree mitigation values.

Except for specimen trees governed by Section 26-32, tree replacement costs shall be determined by a schedule of tree mitigation values adopted by resolution of the Town Council.

[illegible]

SECTION 4. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, phrase, title, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 6. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS ____ DAY OF _____, 2010.

PASSED ON SECOND READING THIS ____ DAY OF _____, 2010.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2010.